

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ZMCC PROPERTIES LLC,

Plaintiff,

v.

Case No. 19-12428

PRIMEONE INSURANCE COMPANY,

Defendant.

ORDER FOR TOM JAJO AND EDITION BC OWNERS LLC TO REMIT PAYMENT

Plaintiff ZMCC Properties LLC brings this action for breach of contract and reformation. (ECF No. 28, PageID.736-47.) On February 9, 2021, Defendant PrimeOne Insurance Co. moved to compel Non-Parties Tom Jajo and Edition BC Owners, LLC, (“Edition”) to comply with subpoenas Defendant issued under Federal Rule of Civil Procedure 45 on August 13, 2020. (ECF No. 47; ECF No. 47-2.) On March 10, 2021, after Non-Parties failed to respond to the motion to compel, the court granted Defendant’s motion. (ECF No. 49.) In the March 10 order, the court directed Defendant to file a bill of costs to account for its reasonable expenses and to serve Non-Parties with the March 10 order. (*Id.*, PageID.1660.)

Defendant filed a bill of costs on March 19, 2021, (ECF No. 50), and the court provided Non-Parties until March 29, 2021, to file a response. (ECF No. 49, PageID.1660.) Over two months have passed since the Defendant filed its motion to compel, and almost a month has passed since Defendant filed its bill of costs. Non-

Parties' deadline to respond to the bill of costs has expired, and Non-Parties have not filed a response.

Federal Rule of Civil Procedure 45(g) states:

The court for the district where compliance is required--and also, after a motion is transferred, the issuing court--may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Under Rule 45(g), the court can impose attorney fees as a sanction "for one who fails entirely to obey a subpoena." Fed. R. Civ. P. 45 Advisory Committee Note (2013); 9A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2465 (3d ed. 2020) ("There is no doubt . . . that there is judicial power to punish the failure to comply with a valid subpoena as a contempt of court."); *Bariteau v. Krane*, 206 F.R.D. 129, 131 (W.D. Ky. 2001) ("Courts have often found a person in contempt for refusing to comply with a validly issued subpoena without objecting to it or making a motion to quash."). Non-Parties had the opportunity to explain why they failed to comply with Defendant's subpoena, but they failed to respond to either Defendant's motion to compel or Defendant's bill of costs. Pursuant to Rule 45(g), Non-Parties have not provided an "adequate excuse" for not complying with the subpoena, and the court finds that an award of attorney fees and costs in favor of Defendant is warranted.

Defendant states that it incurred \$845.50 in filing its February 9 motion to compel. (ECF No. 50, PageID.1662.) In its bill of cost, Defendant provides an itemized list of billing entries, which contains dates, hourly rates, and descriptions of tasks performed. (*Id.*) Non-Parties have not filed any objections to these calculations, and the court finds them fair and reasonable. Fed. R. Civ. P. 45(g). Accordingly,

IT IS ORDERED that Tom Jajo and Edition BC Owners, LLC, jointly and severally, pay Defendant \$845.50 in attorney fees by **May 10, 2021**.

IT IS FURTHER ORDERED that Defendant is DIRECTED to serve Tom Jajo and Edition BC Owners, LLC, with this order by **April 26, 2021**.

Finally, IT IS ORDERED that Defendant file a notice of satisfaction of its awards directly after their receipt.

s/Robert H. Cleland /

ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: April 19, 2021

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, April 19, 2021, by electronic and/or ordinary mail.

s/ Lisa Bartlett for Lisa Wagner /
Case Manager and Deputy Clerk
(810) 292-6522

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